



**ZONING ADMINISTRATOR PERMIT
STAFF REPORT
OCTOBER 5, 2015**

Proposal: **DRAGON PHOENIX – PLN2016-00068** - To consider a request for a Zoning Modification to increase the maximum allowable floor area ratio (FAR) in the Restricted Industrial (I-R) District from 0.35 to 0.37 and allow a 33-space parking reduction associated with the conversion of a 43,152-square-foot tenant space from general warehouse to research and development located in the Bayside Industrial Community Plan Area, and to consider a finding that the proposed project would be within the scope of the environmental impacts analyzed in the previous Environmental Impact Report (SCH#2008042116) and subsequent Addendum to the EIR adopted for the Creekside retail center and warehouse development.

Recommendation: Approve, based on findings and subject to conditions.

Location: 48888 Fremont Boulevard in the Bayside Industrial Community Plan Area;
APN: 519-0820-002-22

Area: Lot: 12.85 acres (559,746 square feet)
Building: 204,749 square feet
Dragon Phoenix Tenant Area: 43,152 square feet

People: David Whitney Architecture (Ryan Sur), Applicant
Crossings at 880 Industrial, LLC Property Owner
David Wage, Staff Planner, 510-494-4447, dwage@fremont.gov

General Plan: Industrial - Tech

Zoning: Restricted Industrial; I-R

EXECUTIVE SUMMARY:

The applicant is requesting an increase in the maximum allowable FAR from 0.35 to 0.37. In August 2015, the owner received certificates of occupancy for three general warehouse buildings totaling 691,000 square feet. Building Two was constructed as a 204,749 square-foot general warehouse building on a 559,746 square-foot lot, which represents a FAR of 0.37. The I-R District allows a maximum FAR of 0.35 for industrial buildings. General Warehouse buildings may be built at a maximum FAR of 0.45. As defined in FMC Section 18.25.3160, General Warehouse buildings must be devoted to the storage of goods and materials, where no more than ten percent of the floor area is used for office. In August 2015, David Whitney Architecture submitted an application for a FAR increase from 0.35 to 0.37 and a parking reduction of 33 spaces to allow research and development uses in a 43,152 square foot tenant space within Building Two. Staff recommends the Zoning Administrator approve the FAR increase and parking reduction based on findings and subject to the conditions of approval in Exhibit "A."

Figure 1: Aerial Photo (2009) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

North: Tech Industrial
 South: Tech Industrial
 East: I-880
 West: Private Open Space



BACKGROUND AND PREVIOUS ACTIONS:

In March 1994, the City Council approved a Rezoning of the project site to I-R, Restricted Industrial, Vesting Tentative Tract Map No. 6591, a Preliminary Grading Plan, and a Development Agreement located on the north side of Dixon Landing Road, west of I-880. The project was commonly known then as Bayside Business Park II. The Bayside Business Park II included nine developable lots for a research and development park (adjacent to I-880) on 59 acres of uplands, including completion of the last roadway segment of Fremont Boulevard to Dixon Landing Road (and the City of Milpitas). The approved project required that the developer restore 100 acres as a wetland preserve adjacent to Coyote Creek and the existing Don Edwards National Wildlife Refuge prior to being allowed to construct structures.

In December 2009, the Planning Commission approved a CUP, Vesting Tentative Tract Map No. 7994 and Preliminary Grading Plan to allow development of a 487,000-square-foot regional shopping center. The proposed shopping center was intended to replace the approved research and development park. However, due to economic forces and market demands at the time, the shopping center development was not constructed.

In December 2013, the City issued building and subdivision improvement permits to develop three speculative warehouse buildings totaling 691,000 square feet and extend Fremont Boulevard from its current terminus to Dixon Landing Road, known as the Crossings at 880 project. The shell building permits for three buildings, wetland restoration and extension of Fremont Boulevard were finalized in August of 2015.

Building Two was approved as a 204,749 square foot shell building located on a 12.85 acre site, which represents a FAR of 0.37. The building is a rectangular-shaped tilt-up structure, with truck dock doors on the east and west sides of the building for loading and unloading full sized semi-trucks. The vehicular access and parking surrounds the building on all four sides. The site is accessible from three driveways on Fremont Boulevard. A portion of the building totaling 99,782 square-feet is occupied by a warehouse for Pivot, an office design company. Dragon Phoenix is proposing to occupy 43,152 square feet within the building for research and development. The remaining 61,815 square feet of space within the building is currently vacant.

PROJECT DESCRIPTION:

Buildings designed and occupied with industrial uses in the I-R District may be constructed with a maximum FAR of 0.35. Buildings with a FAR greater than 0.35 and up to 0.45 are allowed as a General Warehouse use. FMC Section 18.25.3160 defines General Warehouse and limits the use of floor area to the storage of goods and materials, with no more than 10 percent of the floor area used for office. The 204,749 square foot building at 48888 Fremont Boulevard was permitted as a general warehouse building with a FAR of 0.37. Since the tenant space for Dragon Phoenix is proposing to use the space for research and development rather than warehouse, a floor area increase from 0.35 to 0.37 is required. The tenant improvement inside the building would include the installation of insulation, lighting, office areas, meeting rooms, break rooms, restrooms, wood shop and a metal shop. The applicant is also proposing to add a utility yard to enclosure equipment on the west side of the building that would total 6,965 square feet in area. The utility enclosure wall will be designed to match the existing building wall materials and colors. In addition, foundation landscaping will be provided along the wall to soften the appearance of the enclosure from Fremont Boulevard.

A parking reduction was previously granted for the Crossings at 880 project, which assumed the site would be occupied with general warehouse uses. The FMC requires research and development uses to provide more parking than warehouse uses. The applicant is proposing to add 73 parking

spaces onsite as part of their tenant improvements; however, the site would still have a deficit of 33 spaces. The applicant is requesting a parking reduction of 33 spaces. Additional information regarding parking is provided in the "Parking" section of the Staff Report.

PROJECT ANALYSIS:

General Plan Conformance:

The General Plan land use designation for the project site is Tech Industrial. The Tech Industrial designation is intended to accommodate light industrial and research and development-based land uses, many of which are tied to the Silicon Valley economy and related technological, administrative, sales and engineering facilities. The project is located within the Bayside Industrial Community Plan Area, which includes a concentration of industrial development within the City. The Bayside Industrial Area supports the possible intensification of underutilized or vacant sites that could support more economically productive uses. The proposed project would be consistent with the following goals, policies and implementation measures contained in the Land Use and Economic Development Chapters of the General Plan:

Land Use Goal 2-5: Employment Districts – *Strengthen Fremont as a major regional job center, a health care and professional office hub, a preferred location for technology, research and development, and home to a diverse mix of businesses and industries.*

Land Use Implementation Measure 2-5.2.A: Tech Industrial Areas – *Accommodate a range of development settings in the "Tech Industrial" designation, including planned industrial parks with abundant landscaping and high design aesthetic standards similar to Ardenwood and Bayside Technology Parks, and more conventional industrial businesses with outdoor storage and use of hazardous materials.*

Land Use Policy 2-5.9: Optimizing the Use of Industrial Land – *Encourage more efficient and productive use of underutilized industrial land. Industrial land should be recognized as a limited resource that must be carefully managed to accommodate projected job growth and market needs.*

Economic Development Policy 6-1.3: Business Recruitment/Retention – *Through business-friendly policies, recruit new businesses and retain existing businesses that provide revenues to the City and jobs to the community.*

Economic Development Implementation Measure 6-1.3.E: Assist Expansion Efforts – *Assist firms in their efforts to expand locally and provide individualized site selection assistance to ensure that Fremont firms have adequate space to grow their operations in suitably zoned areas that will accommodate future expansion.*

Economic Development Goal 6-3: Diverse Industrial and Technology Uses – *Provide for a variety of industrial uses to minimize the impact of industry-specific downturns on the local economy, to provide a range of job opportunities for local residents, and to provide opportunities for synergy between various industries.*

Bayside Industrial Community Plan Policy 11.2.2: Industrial Intensification and Reuse – *Encourage the reuse of older industrial site in the Bayside area with higher value, higher employment generating land uses, provided that the such uses do not adversely impact adjacent uses and are consistent with other policies in the General Plan.*

Analysis: The proposed FAR increase would enable conversion of a warehouse and allow a technology company to locate their research and development activities in Fremont. Furthermore,

the research and development use would be consistent with the goals, policies and implementation measures of the General Plan in that it would attract a technology company to the City and create new employment opportunities. It would also enable the tenant to maximize the use of a recently constructed warehouse space with a higher value land use that is consistent with other surrounding uses in the Bayside Industrial Community Plan Area.

Zoning Regulations:

As described above, the project was built as shell warehouse building with a FAR of 0.37 in accordance with the development standards of the I-R District for a General Warehouse. The applicant is requesting a FAR increase from 0.35 to 0.37 to allow the building to be used for research and development. The proposal would exceed the maximum FAR for an industrial building by 0.02 or six percent ($0.02/0.35=0.06$). Pursuant to FMC Section 18.190.170 and 18.250, the Zoning Administrator has approval authority to consider FAR increases.

Table "A" shows how the project would comply with the standards for a new industrial development in the I-R District with the proposed FAR deviation highlighted in gray:

Table "A" – I-R District Standards

Lot Feature	I-R Standard	Proposed	Proposed Deviation
Minimum Front Setback	25'0"	±90'0"	No Deviation
Minimum Rear Setback	0'0"	±30'0"	No Deviation
Minimum Side Setbacks	25'0"	±30'0"	No Deviation
Maximum Building Height	75'0"	±40'0"	No Deviation
Floor Area Ratio Limit	0.35	0.37	6% (0.02/0.35)

Circulation

Traffic engineering staff reviewed the proposed project and the potential impact on surrounding intersections and street segments. The proposed project is estimated to result in a net increase of 38 AM peak hour trips, 30 PM peak hour trips and 172 weekday trips. The estimated number of net new trips would not significantly impact the surrounding roadway network. Additional information on vehicular circulation is included in Finding No. 2 in the Staff Report. Onsite pedestrian circulation will be provided by an existing path of travel from the street sidewalk to the main building entry.

Parking

In March 2013, the Planning Commission approved a 44 percent parking reduction from 1,115 to 627 parking spaces for the Crossings at 880 project, which consisted of three warehouse buildings on three separate lots. There is not a shared parking agreement between the lots. The parking requirement of 1,115 spaces for the three warehouse buildings was based on 697,000 square-feet of warehouse space and a parking requirement of 1.6 spaces per 1,000 square feet of floor area. The parking reduction was granted on the basis that the proposed warehouse facilities would generate less parking demand that is required under the FMC due to the limited amount of proposed office space. The parking requirement for research and development space is 3.3 spaces per 1,000 square feet of floor area, which is greater than the requirement for warehouse. Therefore, another parking reduction is required to allow the tenant improvement for Dragon Phoenix.

The property at 48888 Fremont Boulevard was originally constructed with 181 parking spaces to serve all of Building Two. The Dragon Phoenix tenant space is proposing to occupy 22 percent (44,152/204,749) of the total floor area for Building Two. It is assumed the tenant would be

allocated 40 spaces (.22 x 181), which is the proportionate number of the parking spaces available onsite. As shown in Table B below, Dragon Phoenix would be required to provide 146 spaces for the new Research and Development use in the tenant space. The existing site improvements include paved areas that were designed to be restriped in the event non-warehouse uses were proposed and additional parking was required. The applicant is proposing to add 73 parking spaces onsite by striping existing paved areas as part of their tenant improvements. A total of 254 spaces would be provided for Building Two.

Table "B" – Parking Analysis

Use	Standard	Area (square feet)	Number of Spaces
Dragon Phoenix (R&D)	3.3 per ksf	44,152	146
		Total Required Spaces for Dragon Phoenix	146
		Parking Reduction Previously Granted	40
		Proposed Additional Spaces	73
		Proposed Parking Reduction	33 (146-40-73=33)

As shown in Table "B," the project would require an additional parking reduction of 33 spaces. Although the Code requires the applicant to provide 146 parking spaces for the Research and Development use in the tenant space, they are only anticipating a total of 30 employees. The 73 spaces that added as part of the tenant improvements would be more than sufficient to accommodate Dragon Phoenix and the 181 existing spaces are sufficient for the other warehouse uses onsite. A deed restriction required as a condition of the parking reduction and FAR increase would ensure the subject tenant space is not utilized to create a more intensive use than is described in this staff report.

FINDINGS FOR APPROVAL

Pursuant to FMC Section 18.250.070 and based on the analysis above staff recommends that the following findings are made to allow a FAR increase and parking reduction:

Floor Area Ratio Increase

- The proposed use is consistent with the general plan and applicable community plan.**

Analysis: The proposed research and development use is consistent with the Tech Industrial designation and Bayside Industrial Community Plan Area, which both support and encourage a variety of industrial and research and development activity. In addition, the project would also be consistent with General Plan land use policies such as: "Employment Districts," "Business Recruitment/Retention," and "Diverse Industrial and Technology Uses," as enumerated in the staff report.

- The increase in floor area ratio will not cause the project to exceed the capacity of streets and will not adversely affect the privacy of properties in the vicinity of the project.**

Analysis: The project site is located off of Fremont Boulevard, north of Dixon Landing Road. Using ITE trip generate rates, City Traffic Engineering staff estimated the net trips in the PM peak hour for the proposed Dragon Phoenix research and development facility. The number of net trips was estimated for the space used as warehouse as compared to research and development. The proposed project to allow the conversion of 43,152 square feet of area from warehouse to research and development is estimated to result in a net trip increase of 38 AM peak hour trips, 30 PM peak hour trips and 172 total weekday trips, which is below the City's adopted threshold to require a traffic study. Although the City did not conduct a traffic study for the proposed project, an analysis was conducted in 2012 for intersections near the project site as part of an EIR Addendum for the Creekside Landing Warehouse Project. The study showed the Creekside Warehouse project would only have a significant impact at the intersection of Fremont Boulevard/McCarthy Boulevard and Dixon Landing Road during the PM peak hour. This impact was mitigated to a less than significant level through the addition of a northbound through lane and modification of the signal operations which would result in the intersection operating at an acceptable level (LOS D) in the AM and PM peak hour. Other intersections in the vicinity of the project site would operate at LOS F with or without the project. The volume of additional trips generated as a result of the project would not significantly impact the operation of street segments or intersections in the vicinity of the project site.

The proposed FAR increase would not adversely impact the adjacent properties because the site is surrounded by private open space and large buildings of similar size and scale on proportionally-sized lots, and the subject property would still have ample setbacks surrounding the buildings in the form of landscaped areas around the perimeter of the buildings and surface parking lots between the buildings and the street. Furthermore, the project would meet all other development standards in the I-R District for industrial development with the exception of FAR and parking. Privacy would not be significantly impacted.

3. **A deed restriction approved by the city attorney shall be recorded on the property to ensure that the use of the property remains limited to that presented to the approval authority.**

Analysis: A provision would be in place guaranteeing that the FAR increase and parking reduction would not be utilized to create a more intensive use than is described in this staff report. The applicant would be required to record the City's standard Declaration and Acknowledgment of Land Use Restriction Regarding Floor Area Ratio, which would limit use of the new facility solely to those uses described in this staff report or any other use deemed less intensive by the Planning Manager or his/her designee (see Informational Item #2 for a copy of the Form Declaration/Acknowledgment).

4. **The proposed project would provide extraordinary benefits to the city.**

Analysis: The project would provide extraordinary benefits to the City by allowing a major employer in the technology industry to expand locally. Dragon Phoenix has strong ties to other large supporting businesses in the technology, manufacturing and distribution sectors within the City. Allowing an expansion would be a significant benefit to the local economy. It would also be consistent with the City's economic development goals related attracting business that provide revenues to the City and jobs to the community and promoting Fremont as a designation for technology firms.

Parking Reduction

5. **The reduced parking requirement is commensurate with the use of the property and will not adversely impact surrounding streets and properties.**

Analysis: The majority of the 204,749 square foot building is currently occupied with warehouse uses. There are 181 existing parking spaces on the site, which are intended to serve the entire building occupied with general warehouse uses. The project would allow a tenant improvement for a 43,152 square foot vacant space within the building to be used for research and development. As part of their tenant improvements, the applicant is proposing to add 73 parking spaces, which is anticipated to more than accommodate the 30 additional employees anticipated as part of the Dragon Phoenix project. The total amount of proposed parking provided onsite would be sufficient to accommodate the existing and proposed uses. The project would not significantly impact surrounding streets and properties.

6. **A deed restriction approved by the city attorney shall be recorded to ensure that the use of the site shall be limited to that presented to the approval authority**

Analysis: The applicant would be required to record a deed restriction which limits the use of the site to research and development or another use deemed by the Zoning Administrator to be the same or less intense.

City Fees

This project would be subject to citywide Development Impact Fees, including fees for fire protection facilities, capital facilities and traffic facilities. The applicant would receive credit for the 43,152 square foot warehouse space which was previously paid. The fees due would be based on the difference between rate for warehouse and research and development. All applicable fees would be calculated and paid at the fee rates in effect at the time of building permit issuance.

Environmental Review:

An Environmental Impact Report (EIR) was previously certified for the Creekside Landing Project (SCH No. 2008042116), which analyzed development of a 524,000-square-foot retail center. The retail center project was not constructed and in 2013 a revised development plan to construct three speculative warehouse buildings totaling 691,000 square feet was reviewed and approved. An EIR Addendum analyzing the change in land use from commercial to warehouse development was prepared and adopted pursuant to CEQA Guidelines Section 15164. The EIR Addendum concluded the change in land use to allow warehouse development remained within the scope of the previously adopted EIR and no further environmental review was required.

The Dragon Phoenix project would be consistent with the previously approved warehouse project and within the scope of analysis previously completed in the EIR Addendum. The project would allow a tenant improvement for a change of use from warehouse to research and development in a 43,152 square foot area within Building No. 2 of the Creekside Landing Project. The project would be consistent with the approved development plan for the warehouse project in that building and site design are consistent with the previously approved project. Minor modifications to the site and building are proposed as described in this staff report. The EIR Addendum for the Creekside Landing warehouse project prepared in 2013 assumed the subject building would be occupied entirely with warehouse uses. Staff reviewed the Dragon Phoenix project for conformance with the previously prepared EIR Addendum to determine if the proposed research and development land use could result in potential significant impacts, which would require further environmental review.

Pursuant to Public Resources Code Section 21166 and CEQA Guidelines Sections 15162, staff has determined that:

1. No substantial changes are proposed, which would require major revisions to the previous EIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. No substantial changes would occur with respect to the circumstances under which the project is being undertaken, which would require substantial revisions to the previous EIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
3. No new information of substantial importance (which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete) shows any of the following:
 - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Therefore, the City will rely on the previous environmental document, which adequately addresses this project and no additional environmental review is necessary.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 10 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on September 23, 2015. A Public Hearing Notice was published by *The Argus* on September 24, 2015.

ENCLOSURES:***Exhibits:***

Exhibit A [Findings and Conditions](#)

Informational Items:

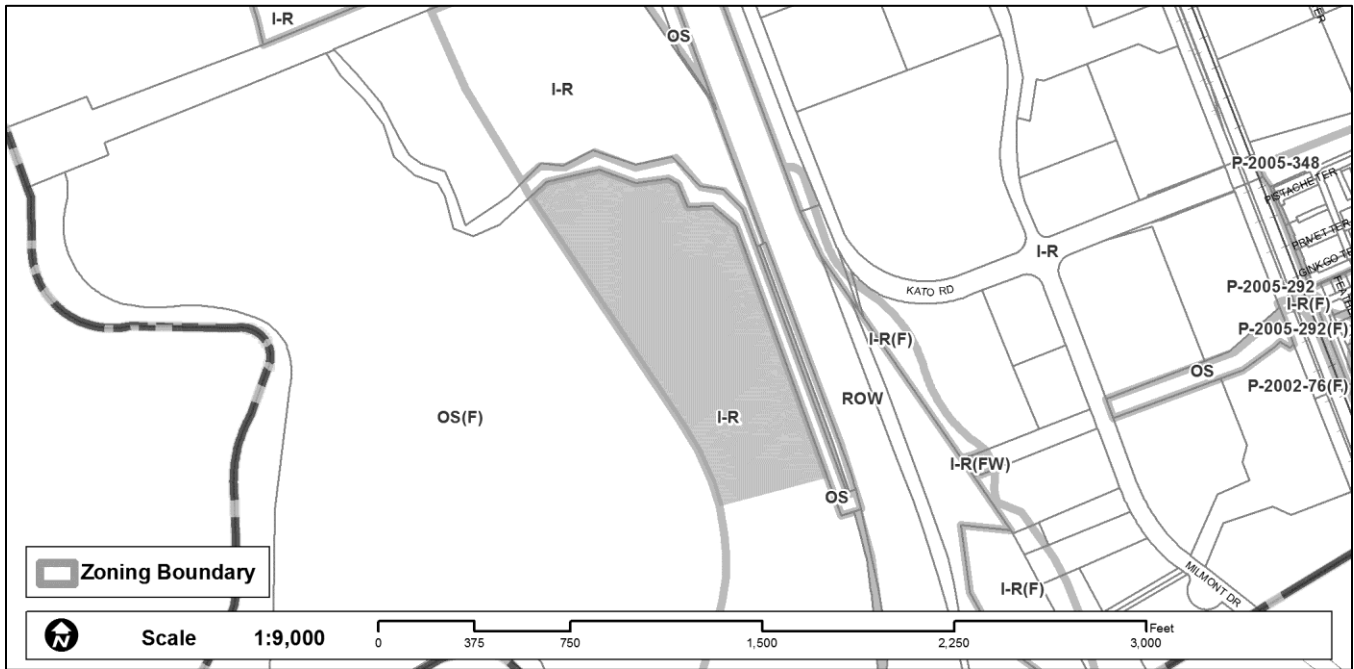
Informational 1 [Statement of Operations](#)
Informational 2 [FAR Deed Restriction Agreement](#)
Informational 3 [Site Plan and Floor Plan](#)

RECOMMENDATION:

1. Hold public hearing.

2. Find, based on its own independent judgment, that the project is within the scope of the environmental impacts analyzed in the previous Environmental Impact Report (SCH#2008042116) and subsequent Addendum to the EIR adopted for the retail center and warehouse development described in the staff report, that none of the conditions requiring a new subsequent environmental impact report stated in Section 21166 of the Public Resources Code or in Sections 15162 of the CEQA Guidelines are present, and that therefore no further environmental review is required.
3. Find PLN2016-00068, a FAR increase from 0.35 to 0.37 to allow an increase the maximum allowable floor area ratio (FAR) in the Restricted Industrial (I-R) District from 0.35 to 0.37 and to allow a 33-space parking reduction associated with the conversion of a 43,152 square foot tenant space from general warehouse to research and development for the property at 48888 Fremont Boulevard, is in conformance with the relevant provisions contained in the City's existing General Plan as enumerated in the Staff Report.
4. Approve PLN2016-00068, as shown on Exhibit "A," subject to findings and conditions in Exhibit "B."

Existing Zoning Shaded Area represents the Project Site



Existing General Plan Shaded Area represents the Project Site

